



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

**VIA EXPRESS MAIL**

REPLY TO THE ATTENTION OF:

C-14J

June 18, 2009

Kenneth R. Will, President and Registered Agent  
VIM Recycling, Incorporated  
29861 Old US Highway 33  
Elkhart, Indiana 46516

Re: *May 8, 2009 EPA Notice of Violation, Issued Pursuant to Section 113(a)(1) of the Clean Air Act, 42 U. S.C. § 7413(a)(1), to VIM Recycling, Inc. Concerning Alleged Violations of the Act at Respondents' Facility located at 29861 Old US Highway 33, Elkhart, Indiana; Copy of Second Revised Draft Administrative Consent Order*

Dear Mr. Will:

Enclosed please find a copy of a second revised draft of the Administrative Consent Order (ACO) to be executed by the Respondents and the United States Environmental Protection Agency, Region 5 (EPA or the Agency) in order to resolve the above-referenced matter. Please note that, after consultation with the Indiana Department of Management, some additional proposed changes have been made by EPA to the draft ACO and these changes have been highlighted in the draft document. Also, a copy of the draft site map referenced in paragraph 32 of the ACO (Attachment A) is attached to this draft version of the document. Please carefully review the attached revised ACO and then provide me with Respondents' final comments or proposed changes as soon as possible.

Once the parties have agreed upon all of the terms and conditions of the ACO, EPA will forward to you two final copies of the agreement to be executed by Respondents. Once both copies of the ACO have been executed by Respondents and returned to the Agency, the ACO will then be executed by EPA; filed with the Regional Hearing Clerk; and one original copy of the ACO will be returned to Respondents for Respondents' records. The Order will become effective on the date it is filed with the Regional Hearing Clerk.

Thank you for your cooperation in resolving this matter and if you have any questions concerning this draft ACO or the proposed resolution of this matter please feel free to call me at (312) 886-0558. Please note that I will be out of the office on June 19, 2009, however, please feel free to contact Mr. Brent Marable at (312) 886-6812 or Mr. Paul Ruesch (312) 886-7898.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. Steketee", written over a horizontal line.

John P. Steketee  
Associate Regional Counsel

Enclosure

cc: S. Downey (AE-17J)  
M. Onyszko (AE-17J)  
B. Marable (AE-17J)  
P. Ruesch (LM-8J)  
J. Hassan (LM-8J)  
S. Mendoza (C-14J)  
E. Cohen (C-14J)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

VIM Recycling, Inc.  
29861 Old US Highway 33  
Elkhart, Indiana

and

VIM Recycling, Inc.  
64654 U.S. 33 East  
Goshen, Indiana

and

K.C. Industries, LLC  
22907 S.R. 120  
Elkhart, Indiana,

**RESPONDENTS.**

**ADMINISTRATIVE CONSENT ORDER**

**EPA-5-09-113(a)-IN-05**

Proceedings Pursuant to Section  
113(a)(1) and 114 of the Clean Air Act,  
42 U.S.C. §§ 7413(a)(1) and 7414

**ADMINISTRATIVE CONSENT ORDER**

1. The Director of the Air and Radiation Division, United States Environmental Protection Agency (EPA), Region 5, is issuing this Order to the above-captioned Respondents under Section 113(a)(1) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(1).

**Statutory and Regulatory Background**

2. Section 110 of the Clean Air Act, as amended, (the Act), 42 U.S.C. § 7410, requires that each State, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of the Act for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State were to adopt and

submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State.

3. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), states that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—(A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit, (B) issue an administrative penalty order in accordance with subsection (d) of this section, or (C) bring a civil action in accordance with subsection (b) of this section. Section 114 of the Act, 42 U.S.C. § 7414, states that the Administrator may require any person subject to the Act to, among other things, maintain and keep records, make reports and any other information as the Administrator may reasonably require.

4. Section 302 (e) of the Act, 42 U.S.C. § 7602(e), defines the term “person” to include an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

5. Section 302 (g) of the Act, 42 U.S.C. § 7602(g), defines the term “air pollutant” as any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is

emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term “air pollutant” is used.

6. Each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the Act, 42 U.S.C. § 7410.

7. On June 22, 1978, EPA approved the Indiana Air Pollution Control Board regulation APC 2 (IN APC 2), enacted pursuant to the authority found in IC 13-1-1 and IC 13-7-4 and amending in its entirety Indiana Regulation APC 2 promulgated on December 6, 1968 and all resolutions adopted there under, as part of the federally enforceable Indiana State Implementation Plan (IN SIP). 43 Fed. Reg. 26721 (February 1, 1996). The effective date was July 24, 1978. Indiana has since re-codified IN APC 2 as 326 IAC-4-1.

8. The IN SIP defines an “open burning” as the combustion of any matter in the open or in an open dump.

9. The IN SIP defines an “open,” as used in open burning, as: a) the products of combustion are emitted directly into the open air without passing through a stack or chimney; or b) combustion occurs in a device other than an approved incinerator or boiler.

10. The IN SIP defines “material” as all biodegradable and non-biodegradable substances including garbage, rubbish ashes, commercial, industrial and institutional wastes, wood and wood products.

11. The IN SIP prohibits the open burning of any material, except as provided in two exemptions which are not applicable to this case.

12. Under Section 113(a)(1) of the Act, 42 U.S.C. §7413(a)(1), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating a SIP requirement. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

### **Findings**

13. Respondent VIM Recycling, Inc., 64654 U.S. 33 East, Goshen, Indiana is a corporation incorporated under the laws of the State of Illinois.

14. Respondent VIM Recycling, Inc., 29861 Old US Highway 33, Elkhart, Indiana is a branch location of VIM Recycling, Inc., 64654 U.S. 33 East, Goshen, Indiana.

15. K.C. Industries, LLC, 22907 S.R. 120, Elkhart, Indiana, is a corporation incorporated under the laws of the State of Indiana.

16. Respondents own and/or operate a wood recycling facility located at 29861 Old U.S. Highway 33, Elkhart, Indiana.

17. Respondents Elkhart, Indiana facility contains outdoor piles of wood and construction and demolition materials in various stages of processing.

18. On May 5, 2009, representatives of EPA and the Indiana Department of Environmental Management (IDEM) visited the Respondents Elkhart, Indiana facility and found evidence of open burning of wood and construction and demolition materials at the site.

19. On May 8, 2009, EPA issued to Respondents a Notice of Violation documenting the evidence obtained by EPA and IDEM of the open burning of wood and construction and demolition materials at the site and alleging that Respondents were in violation of the IN SIP by open burning these materials at their Elkhart, Indiana facility.

20. On May 18, 2009, representatives of Respondents, EPA and the State of Indiana discussed the Notice of Violation.

#### **Conclusions of Law and Violations**

21. Respondents are persons as defined by Section 302 (e) of the Act, 42 U.S.C. § 7602(e).
22. The smoke being emitted from Respondents' facility is an air pollutant as defined by Section 302 (g) of the Act, 42 U.S.C. § 7602(g).
23. The open burning at Respondents' facility was and is in violation of the IN SIP.
24. The open burning at Respondents' facility is in violation Section 110 of the Act, 42 U.S.C. § 7410.
25. None of the exemptions found under the IN SIP apply to the open burning currently occurring at Respondents' facility.

#### **Compliance Program**

26. Respondents shall comply, at all times relevant to this Order, with the IN SIP at their Elkhart, Indiana facility, and agree to fully demonstrate such compliance to EPA and IDEM, in accordance with the following provisions.

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27. Respondents shall immediately place soil, and water, only to the extent necessary, on all areas of any stockpiles at the site found to be burning or smoldering as a temporary measure to control smoke and/or odors. Respondents shall document these activities in accordance with paragraph 28 of this Order. Respondents shall continue to place soil on all areas of stockpiles which may experience burning or smoldering until the "C pile" materials are removed pursuant to paragraph 31 of this Order.

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28. Respondents shall keep the following records concerning these activities:

- a. Records shall be kept on site including the location(s) of all soil placement activities, estimated quantities of soil material placed, and date/time of placement.
- b. Records shall be kept on site of all areas of stockpiles found to be burning, smoking or smoldering, along with the response action taken.
- c. Records of soil material placement shall be made available to EPA or IDEM personnel upon request at any time.

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29. As specified in paragraph 31 of this Order, the soil material placed on the "C<sub>pile</sub>" materials can be screened out and left on site pursuant to paragraph 33 of this Order.

30. All stockpiles will be monitored on a daily basis by site personnel as outlined in paragraphs 47, 48 and 49 of this Order. Any stockpiles found to be burning, smoking or smoldering will be addressed within three (3) hours by application of soil and/or other measures to control smoke and/or odors.

31. Respondents must remove from the site all mixed construction and demolition debris equal to or greater than four (4) inches in diameter, contained in the "C piles," as defined in paragraph 32 of this Order. Respondents must comply with this requirement in its entirety by December 31, 2009.

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32. A site map delineating the boundaries of the "C piles," to be addressed pursuant to paragraph 31 is attached to this Order (see Attachment A). EPA may adjust the precise limits of the "C Piles" identified in Attachment A at any time during the implementation of this Order.

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33. Prior to removal, "C pile" materials may only be sorted such that larger materials, equal to or greater than four (4) inches diameter, are removed by mechanical screening. Smaller materials, i.e. less than four (4) inches diameter, may remain on site for integration into marketable material authorized by



IDEM. Larger materials, i.e. equal to or greater than four (4) inches diameter, must be removed from the site at a minimum rate of One Thousand (1,000) cubic yards per week.

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34. No further processing such as grinding, shredding or chipping is permitted on the "C pile" materials being removed pursuant to paragraph 31 of this Order, unless otherwise permitted by IDEM and approved in writing by EPA.

35. Respondents shall take all reasonable measures to prevent fires and emissions of smoke or dust during the excavation, sorting, screening, and transport of all "C pile" materials.

36. Respondents shall prevent tracking of mud or debris onto public highways from vehicles involved in the transport of excavated materials.

37. Respondent shall limit work activities to comply with this Order, such as material excavation, sorting, screening and transport, to normal business hours.

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38. All screened materials, i.e. particles less than four (4) inches in diameter, which remain on site, must be stored in engineered windrows which do not exceed twenty (20) feet in height and have a minimum of twenty (20) feet separation in between other windrowed or stockpiled materials. The areas separating the windrowed or stockpiled material must be maintained to facilitate access by emergency vehicles.

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39. All windrows of screened "C pile" resulting from screening must be maintained such that no fires occur within or on the surface of the windrows.

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40. Load tickets will be completed, signed, recorded and maintained on site which document the date, hauler, approximate load volume in cubic yards and exact weight in tons, and destination of all materials removed pursuant to this Order.

41. Prior to commencement of the removal of “C pile” materials, certification reports shall be provided by Respondents to EPA for all scales utilized during the project, including the VIM Elkhart, Indiana site and any other facility receiving the “C pile” materials for processing or disposition.

42. All “C Pile” materials must be disposed of either in a solid waste land disposal facility permitted to accept this type of waste by IDEM under 329-IAC-10 or a solid waste processing facility permitted to accept this type waste by IDEM under 329-IAC-11.

43. Respondents must provide EPA with a written summary of progress made to remove “C pile” materials, identified in paragraph 32 of this Order, each week by the following Monday at 12:00 noon Eastern Daylight Time via electronic mail. The summary should include the following:

- a. Documentation of any soil or water placement on areas of any stockpiles found to be burning or smoldering pursuant to paragraph 27 of this Order.
- b. Description and corresponding weight/volume of “C pile” material removed during the week,
- c. Volume of screened “C pile” material left on site after processing,
- d. Cumulative totals of all “C pile” materials removed to date,
- e. Cumulative totals of all “C pile” materials remaining on site to be screened and removed,
- f. Summary of load ticket data (see paragraph 40),
- g. Inventory of all operating equipment on site dedicated to “C pile” screening and removal during the current week,
- h. Personnel on site dedicated to “C pile” removal during the current week, and

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i. Anticipated personnel, equipment and activities for the following week to screen and/or remove "C pile" materials.

44. To the extent practicable, Respondents shall provide and accurately update a topographic map of "C Pile" material stockpiles, as defined in Attachment A of this Order, which clearly delineates the vertical and horizontal limits of "C pile" material stockpiles being removed, as well as screened material windrows remaining on site, during the week immediately prior to the due date of the progress reports specified in paragraph 57. The completed topographic map must be included in each progress report submitted to EPA.

45. EPA may require removal of additional wastes or materials stockpiled on site in the event that these stockpiles are not being managed in a manner which prevents fires from occurring.

46. In the event that fires are occurring in additional wastes or materials stockpiled on site, EPA will develop a schedule for Respondents to remove these additional wastes or materials from the site in accordance with the conditions contained in this Order.

47. During removal of the "C pile" materials, Respondents must provide surveillance on site seven (7) days a week to ensure that any fires or smoking stockpiles of materials are immediately detected and reported to either company officials and/or the local fire department for appropriate response.

48. A schedule must be established by Respondents and a daily record shall be kept by Respondents on site including the name of surveillance personnel, time/date of all site inspections made, any visual observations of smoke or fire, and any notifications made either to company personnel or the local fire department.

49. Records of site inspections must be made available by Respondents to Agency personnel upon request at any time.

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50. Respondents shall not accept any additional "C" materials, as defined below, at the 29861 Old U.S. Highway 33, Elkhart, Indiana site until all "C piles," as defined in paragraph 32, are removed pursuant to this Order. At no time during the implementation of this Order shall Respondents stockpile or co-mingle any "B" materials, as defined below, within the limits or immediately adjacent to any existing "C piles," as defined in paragraph 32 of this Order.

- a. "B" materials are hereby defined as all "manufactured" wood products, including plywood, particle board, oriented strand board (OSB), and all other "manufactured" or "engineered" wood wastes which may contain chemical binders, resins, coatings, and/or glues.
- b. "C" materials are hereby defined as "B" materials (as defined above), that have deteriorated or been mixed with soils and/or other debris such that they require initial sorting or mechanical screening prior to further processing.

51. Respondents must ensure that all workers dedicated to "C pile" sorting, screening and removal on site receive safety training and have adequate personal protective equipment, including reflective vests, safety glasses, hardhats, gloves and steel-toed boots.

52. Respondents shall develop a contingency plan for possible emergencies (Site Emergency Plan) which may occur during the project in coordination with the local fire department, EPA and IDEM.

53. The Site Emergency Plan shall outline current site layout and conditions, site access, available local firefighting or emergency response resources, directions to the nearest hospitals, inventory of site equipment, contingency plans in the event of a fire, release or explosion, and emergency contact information for all company, local, state and federal emergency responders.

54. A draft Site Emergency Plan shall be submitted to both EPA within fourteen (14) days of the signature of this Order.

55. Respondents shall implement the Site Emergency Plan upon submittal to EPA.

56. Respondents must establish and maintain an Internet website to provide the public weekly updates on progress being made to mitigate fires, smoke and odors from the site along with the progress to remove stockpiled "C Pile" materials pursuant to this Order.

57. VIM must submit monthly summary reports of progress made to comply with this Order to EPA as follows:

- a. Progress Report #1 by July 17, 2009
- b. Progress Report #2 by August 14, 2009
- c. Progress Report #3 by September 14, 2009
- d. Progress Report #4 by October 16, 2009
- e. Progress Report #5 by November 13, 2009
- f. Progress Report #6 by December 11, 2009
- g. Final Report by January 15, 2010

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58. VIM must send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

and

Attention: Bruce Palin  
State of Indiana Department of Environmental Management  
Office of Land Quality (MC 66-30)  
100 North Senate Avenue

**General Provisions**

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59. This Order does not affect Respondents' responsibility to comply with other federal, state, and local laws.

60. This Order does not restrict EPA's or IDEM's authority to enforce the Indiana SIP or any other requirement of the Act.

61. Nothing in this Order limits EPA's authority to seek appropriate relief, including penalties, under Section 113 of the Act, 42 U.S.C. § 7413, for Respondents' violations of the IN SIP.

62. Failure to comply with this Order may subject Respondents to penalties of up to Thirty Seven Thousand, Five Hundred Dollars and No Cents (\$37,500) per day for each violation of the Order and or the CAA pursuant to Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

63. Should Respondents require an extension of any deadline in this Order, there must be a reasonable basis for any such extension and Respondents must submit a written request to EPA for any extension seven (7) business days prior to the deadline. EPA will use its discretion in deciding whether to grant any requested extension.

64. The terms of this Order are binding on Respondents, their assignees and successors.

65. Respondents must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.

66. EPA may use any information submitted to, or obtained by, EPA and IDEM under this Order in any administrative, civil, judicial, or criminal action.

67. Respondents agree to the terms and conditions of this Order and agree not to appeal this order to any administrative or judicial court or other entity.

68. This Order is effective on the date of signature by the Director of the Air and Radiation Division. It will terminate one (1) year from the effective date, provided that Respondents have complied with all terms of the Order throughout its duration.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kenneth R. Will, President  
VIM Recycling, Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cheryl L. Newton, Director  
Air and Radiation Division

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent the Administrative Consent Order, U.S. EPA Order No. EPA-5-09-113(a)-IN-05, by Certified Mail, Return Receipt Requested, to:

Kenneth R. Will, President  
VIM Recycling, Inc.  
P.O. Box 3055  
Elkhart, Indiana 46515

and

Kenneth R. Will, President and Registered Agent  
VIM Recycling, Inc.  
64654 U.S. 33 East  
Goshen, Indiana 46526

and

Kenneth R. Will, Registered Agent  
K.C. Industries, LLC  
22907 S.R. 120  
Elkhart, Indiana 46516

\_\_\_ I also certify that I sent a copy of the Administrative Consent Order, U.S. EPA Order No. EPA-5-09-113(a)-IN-05, by First Class Mail to:

Bruce H. Palin  
Indiana Department of Environmental Management  
Office of Land Quality  
100 North Senate Avenue (MC 66-30)  
Indianapolis, Indiana 46204-2251

on the \_\_\_\_\_ day of \_\_\_\_\_, 2009,

Betty Williams, Administrative Program Assistant  
AECAS(IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: \_\_\_\_\_

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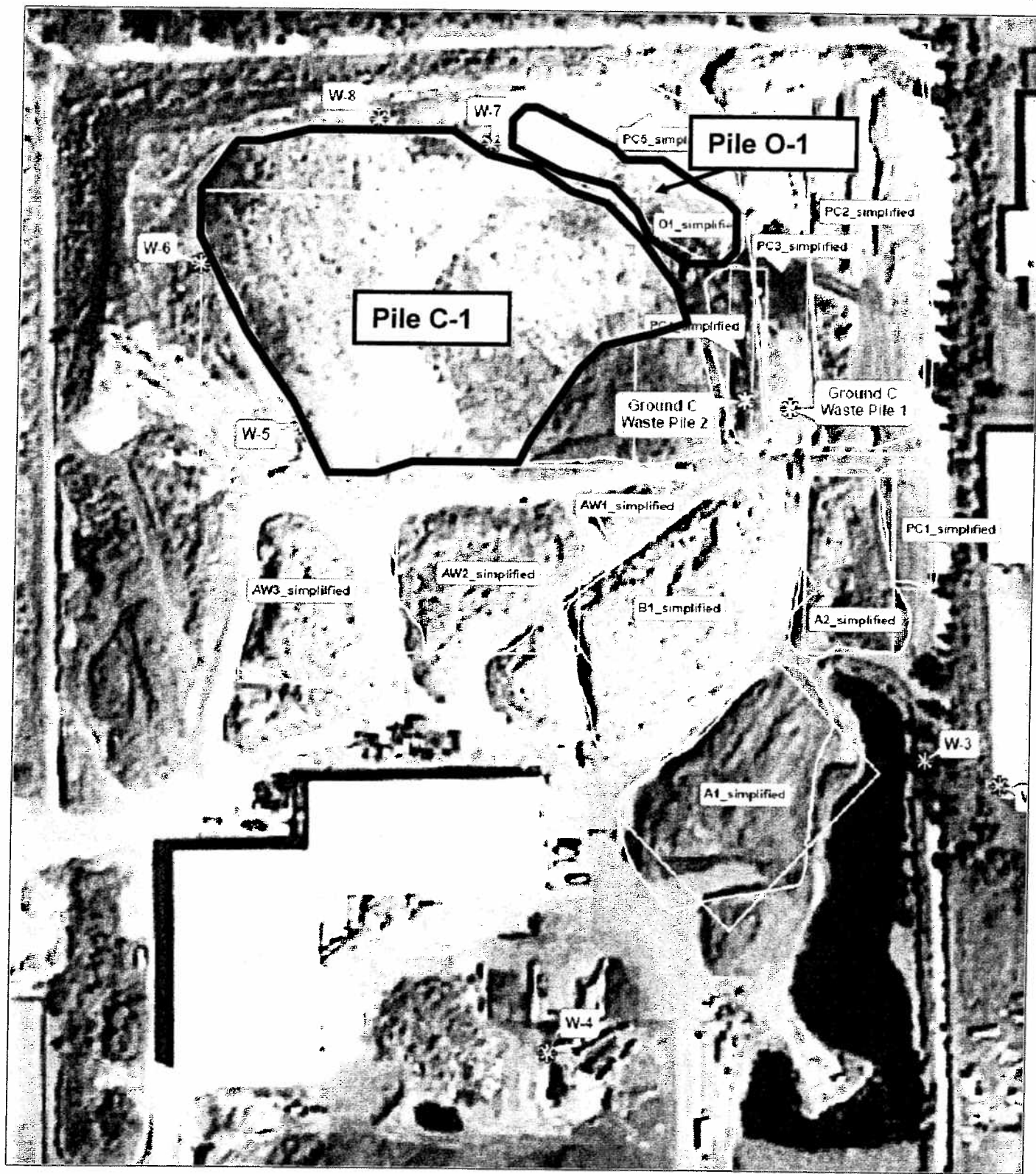
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**Attachment A. Boundaries of "C Pile" material stockpiles to be addressed pursuant to paragraph 31 of Compliance Program\***



**\*The precise limits of "C Pile" material stockpiles C-1 and O-1 may be adjusted by EPA in the field as the removal progresses.**